IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16832 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATIBHA RAMJIBHAI VYAS MINOR - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE SECRETARY & 2 - Respondent(s)

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Appearance :
MR TULSHI R SAVANI for Petitioner(s) : 1,
MR DASHARATH CHAUHAN, AGP for Respondent(s) : 1-3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/07/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule returnable forthwith. Mr Dasharath Chauhan waives service of Rule for respondent Nos.1 to 3.

2. Heard Mr Pranav Raval and Mr TR Savani for the petitioner and Mr Chauhan, learned AGP for the respondents.

3. The petitioner herein passed her H.S.C. Examination in Science stream in March 2007 and the petitioner also passed the GUJCET examination conducted by the Higher Secondary Education Board. As per the formula prepared by the Centralised Admission Committee for admissions to medical, dental and physiotherapy colleges, the petitioner obtained 166.5579 merit marks after combining the marks obtained at the H.Sc examination and the marks obtained at GUJCET examination. The petitioner had applied for admission to First MBBS course in three categories : (i) physically handicapped candidates, (ii) SEBC candidates and (iii) open merit candidates.

4. For the purpose of being treated as a physically handicapped student, the petitioner had produced the certificate dated 9.2.2005 issued by the Medical Board of the New Civil Hospital, Surat wherein the petitioner was certified as having more than 40% permanent physical impairment in relation to her body. However, the question whether the petitioner can be considered as a physically handicapped candidate as per the admission Rules has to be considered by the Chairman of the Centralised Medical Admission Committee as indicated in Rule 2.9, which reads as under :-

> “2.9 Three percent (3%) of available seats in each category (SC/ST/SEBC/OPEN) / Board in each Government, Municipal and Grant-In-Aid Medical /Dental/ Physiotherapy/ Ayurveda/ Homeopathy/ Nursing/ Occupational Therapy/ Optometry/ Naturopathy/Prosthetics & Orthotics Colleges shall be reserved for loco-motor disabled candidates of the respective category provided that a candidate having “loco-motor disability of lower limbs between 50% to 70% (upper limbs being normal)” shall be eligible to apply for admission to the course subject to the certificate obtained as per the Proforma annexed to the application form to that effect from medical board constituted for the purpose regarding disability and suitability of such candidate for undertaking the course shall be treated as final.”

5. The petitioner accordingly appeared before the Board for deciding the eligibility and suitability for admissions against reserved seats for loco-motor disabled candidates at Ahmedabad and the said Board issued certificate dated 19.6.2007 (Annexure R3), the relevant part of which reads as under :-

3	(a)	Nature of disability	POLIO BOTH LOWER LIMB flail Rt. Side & shortening
	(b)	Any disability in upper limbs	NO
	(c)	Extent of disability (upper limbs should be normal) ON ANATOMICAL FUNCTIONAL ECONOMICAL BASIS MENTIONED AS PERCENTAGE BELOW 50%/50% TO 70% /ABOVE 70%/TOTAL DISABILITY	75% (Seventy Five)
4		Despite the disability whether the candidate is fit to undergo Medical/Dental/Physiotherapy/ Ayurved/ Homoepathy/ Nursing/ Orthotics education and will be able to discharge his/her duties as Physician/Dental Surgeon/ Physiotherapist/ Vaidya/ Homeopathist/ Nurse/ Orthocian thereafter	NO

6. Since the petitioner was considered ineligible for admission to First MBBS course on the basis of reservation for physically handicapped students, the petitioner moved this Court before commencement of admission process.

7. The defence of the respondents is that the assessment of physical disability is a matter of technical expertise and the technical experts having certified that the petitioner has disability of 75%, it is not open to this Court to go behind this finding. It is also submitted that Rule 2.9 of the Admission Rules is based upon the MCI Regulations.

8. When the petition was heard on 19.7.2007 and again today when the petition has been taken up for final disposal, we have put specific queries to Dr MK Patel – a member of the Centralized Admission Committee - whether the petitioner would have been admitted to the First MBBS course in the open merit category or as an SEBC student if she was entitled to get such admission on the basis of her merit marks in the concerned category. In other words, we had specifically asked the Member of the Admission Committee, if the petitioner were to secure admission to the First MBBS course on merits, either in SEBC category or in open merit category, whether she would have been considered unsuitable for undertaking the course. The specific answer to the above queries was in the negative i.e. it was specifically stated that as an open merit candidate or SEBC candidate the petitioner would have been considered to be suitable candidate for undergoing the course.

9. In view of the nature of the controversy and the above stand of the respondents, we have seen the petitioner who has remained present in the Court. We find that the petitioner is able to walk with a slight limp in the right leg because of shortening of the right leg and that she is able to walk in the Court room. As far as her upper limbs are concerned, there is no dispute or controversy because the Medical Board has also certified that there is no disability in her upper limbs. In view of the above, we are of the view that the assessment of the petitioner's disability at 75% in order to keep her out of consideration is absolutely arbitrary and no reasonable person would ever make such assessment as exceeding 70%. It would be 50% to 70%. We also find that in the list of physically handicapped students, the petitioner is quite higher up in the merit list and that she tops the list of physically handicapped students in the SEBC category.

10. While issuing notice on this petition, we had passed the

following ad-interim order on 6.7.2007 :-

> “Notice returnable on 13.7.2007.
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> 2. Till further orders, the respondents shall not fill in one seat for SEBC physically handicapped students at Surat. If there is any other SEBC physically handicapped candidate who is eligible to get admission in the Surat medical college and is more meritorious than the petitioner, then, one vacancy shall be maintained in the above category at any other place.
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> 3. It is further clarified that before the returnable date, in case the petitioner's case comes up for consideration as SEBC candidate (without being considered as a physically handicapped candidate), the respondents shall also consider the petitioner's case in the said category and it will be open to the petitioner to accept admission in such category in which case the vacancy in the category of SEBC physically handicapped students shall not continue, that is to say, in case if she gets such admission at Surat, the earlier part of this order granting injunction against filling in one seat reserved for physically handicapped candidates shall not operate.”

11. The admissions to the First MBBS course in all the categories were granted on 6th, 7th and 8th July and looking to the number of total seats in the First MBBS course in the Medical Colleges of the State Government or the quota for free seats in medical colleges run by local authorities like Ahmedabad Municipal Corporation, at the rate of 27% reservation, about 270 seats were reserved for SEBC students. Out of these seats, at the rate of 3%, about 8 seats were reserved for physically handicapped students in the SEBC category. We find that 7 physically handicapped students in the SEBC category with lower merit marks than the petitioner have been granted admissions to the seats reserved for physically handicapped students in the SEBC category. On merits, the petitioner was topping the list of physically handicapped students in the SEBC category. Even then, the respondents have kept vacant one seat in the open category at Surat.

12. In view of our finding that the petitioner's physical disability could never have been assessed as exceeding 70% and also considering the fact that the petitioner's physical disability was assessed at more than 40% as per the certificate issued by the Medical Board of New Civil Hospital, Surat and also considering the fact that the petitioner cannot be considered to be unsuitable for undergoing the course in the Medical College or unsuitable for practising as a physician after the course, we have no hesitation in declaring that the petitioner is entitled to be considered for admission to the First MBBS course on a seat reserved for physically handicapped students in the SEBC category. In view of the factual finding that seven students with lower merit in the category of physically handicapped students belonging to SEBC category have already been granted admission, we have no hesitation in directing the respondents to give the petitioner admission to the First MBBS course on a seat reserved for physically handicapped students in the SEBC category at Surat.

13. Since, according to the respondents, they have kept one open merit seat vacant at Surat, it is for the respondents to take the necessary steps when the reshuffling exercise takes place, which is likely to take place next week and it will open to the respondent authorities to make any such adjustment, but the petitioner shall be granted admission to the First MBBS course. We find that a seat reserved for physically handicapped students in the SEBC category was available at Surat, but from the chart of physically handicapped students made available to us, it appears that Hadia Pravinkumar Parsottambhai belonging to SEBC category, but having only 100.46 merit marks (as against 166.5579 merit marks of the petitioner), has been granted admission on the said reserved seat at the Government Medical College, Surat. The said student is almost at the bottom of the merit list for the physically handicapped students in the SEBC category as against the petitioner being at the

top of the list of physically handicapped students belonging to SEBC category.

14. Since the respondents appear to have granted admission to Hadia Pravinkumar Parshottmabhai without complying with our order dated 6.7.2007, whatever steps the respondents may have to take for readjustment, the petitioner shall not be denied her right to be admitted to the seat at Surat reserved for physically handicapped students in the SEBC category.

15. The petition is accordingly allowed. The respondents are directed to admit the petitioner to the First MBBS course in the seat reserved for physically handicapped students in the SEBC category at Surat. This shall be done within two days from the date of receipt of this order.

We also make it clear that this order is passed in the presence of Dr MK Patel, who is a Member of the Centralized Admission Committee.

Rule is made absolute to the aforesaid extent.
Direct Service is permitted.

[M.S. SHAH, J.]

[K.A. PUJ, J.]

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